

On appeal appellant's attorney contends that the report by Dr. Lawrence Kirk, a Board-certified family practitioner, establishes that appellant's preexisting back condition was aggravated by the July 18, 2005 work incident.

FACTUAL HISTORY

On August 31, 2005 appellant, then a 34-year-old electronics worker student trainee, filed an occupational disease claim alleging that on July 18, 2005 she first realized that her employment duties had aggravated her back condition.¹ She noted prior low back problems since July 1, 1990. While appellant was walking across a parking lot at the employing establishment she felt severe pain in her lower back.

In an August 25, 2005 disability note, Dr. Peter O. Holiday, a treating physician, advised that appellant was totally disabled for the period August 25 to September 8, 2005.

By letter dated September 19, 2005, the Office informed appellant that the evidence was insufficient to support her claim. It advised her to submit additional medical and factual evidence in support of her claim.

On September 26, 2005 appellant requested to withdraw her claim as she had no evidence showing that her back condition was employment related. On October 20, 2005 the Office advised her that it would take no further action on her claim.

The case lay dormant until appellant submitted a May 30, 2007 report from Dr. Sallyanne Pyle, a treating Board-certified psychiatrist, who diagnosed chronic back pain and resulting mood disorder and severe recurrent major depressive disorder. Dr. Pyle reported that appellant stated that she was unable to perform her job duties due to pain exacerbated by the heavy lifting required on the job. Appellant related that she had back problems since sustaining an injury at the age of 17.

By letter dated June 11, 2007, appellant requested that the Office reopen her claim. She submitted a June 5, 2007 report from Dr. Daxes M. Banit, a treating Board-certified surgeon, who diagnosed neuritis but provided no opinion as to the cause of this condition.

By letter dated June 26, 2007, the Office informed appellant that a new file number would be assigned and that it would adjudicate her request as a new claim.² It informed her that the evidence of record was insufficient to support her claim and advised her to submit additional medical and factual evidence.

In response appellant submitted a July 17, 2007 progress note and September 27, 2006 report from Dr. Banit who noted that he had treated appellant since May 2006 for back pain. Dr. Banit diagnosed lumbosacral or thoracic neuritis or radiculitis, sacroiliitis, spondylitis and other inflammatory spondylopathies.

In treatment records dated July 2006 to July 2007, Dr. Shields diagnosed lumbosacral or thoracic neuritis or radiculitis, sacroiliitis, spondylitis and other inflammatory spondylopathies.

¹ The Office assigned file number xxxxxx482.

² The Office assigned file number xxxxxx461.

In an August 13, 2007 report, Dr. Kirk reported that appellant had low back pain since August 2003. It worsened on July 18, 2005 when she reinjured her back at work. Dr. Kirk stated that “[t]his is of course per patient[,] but her job could definitely have aggravated her condition.”

In a statement, appellant noted that, while she had back problems for over 15 years, on July 18, 2005 she experienced excruciating pain after walking down steps of a pedestrian overpass leading to her work building. Since July 18, 2005, she had extreme low back pain which impacted her life style and activities.

By decision dated August 27, 2007, the Office denied appellant’s claim. It found that the evidence of record did not provide rationalized medical opinion evidence explaining how the event of July 18, 2005 caused or aggravated her preexisting back condition.

On August 11, 2008 appellant requested reconsideration. She submitted a statement from her husband and a July 10, 2008 report of Dr. Kirk who noted that he had treated appellant since June 2002 for recurring lower back problems. Appellant complained of increased back pain in September 2003, which was treated with medication. Dr. Kirk stated that appellant related that she reinjured her back at work on July 18, 2005 while going down steps of a pedestrian overpass to go to her work building. He opined that “this wrong step could have definitely played a role in aggravating her condition.” Dr. Kirk stated, “[i]t is in my professional opinion that [appellant]’s job could have played a role in aggravating her condition.”

In a decision dated August 28, 2008, the Office determined that appellant’s request for reconsideration was insufficient to warrant further merit review of her claim. It found that the evidence submitted by appellant was cumulative and repetitive.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act³ provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁴ The employee shall exercise this right through a request to the district Office. The request, together with the supporting statements and evidence, is called the application for reconsideration.⁵

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8128(a). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁵ 20 C.F.R. § 10.605.

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

Appellant's August 11, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).⁸

Appellant submitted a July 10, 2008 report from Dr. Kirk who noted that he had treated her for back problems since June 2002. Dr. Kirk advised that appellant related that she reinjured her back at work on July 18, 2005 while walking down steps of a pedestrian overpass to go to her work building. He opined that "this wrong step could have definitely played a role in aggravating her condition" and that "[appellant]'s job could have played a role in aggravating her condition." This report is similar to an August 13, 2007 report in which Dr. Kirk stated that appellant's job could have aggravated her condition. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Dr. Kirk's July 10, 2008 report is cumulative of evidence that was previously of record and considered by the Office in its prior decision. This report does not constitute relevant and pertinent new evidence not previously considered by the Office.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.¹⁰

⁶ *Id.* at § 10.606. See *Susan A. Filkins*, 57 ECAB 630 (2006).

⁷ *Id.* at §10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

⁸ *Id.* at § 10.606(b)(2)(i), (ii).

⁹ *A.L.*, 60 ECAB ____ (Docket No. 08-1730, issued March 16, 2009); *R.M.*, 59 ECAB ____ (Docket No. 08-734, issued September 5, 2008).

¹⁰ See 20 C.F.R. § 10.608(b); *Y.S.*, 60 ECAB ____ (Docket No. 08-440, issued March 16, 2009); *Richard Yadron*, 57 ECAB 207 (2005).

CONCLUSION

The Board further finds that the Office properly declined to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 28, 2008 is affirmed.

Issued: December 8, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board